No. 99

In the Supreme Court of the United States

OCTOBER TERM, 1964

PETROS TRASSINOS, PETITIONER

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

[illegible]

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 966

PETROS PRASSINOS, PETITIONER

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The order of the court of appeals (Pet. App. 15a) is not reported. The opinion of the district court (R. 10-16) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 21, 1961 (Pet. App. 15a). The petition for a writ of certiorari was filed on May 15, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in an action to set aside an order of deportation, petitioner had a right to expand the record in order to adduce matters arising subsequent to the issuance of the order.

2. Whether an order for petitioner's deportation was void because deportation was not effected within six months after the order, as a result of the Attorney General's decision to prosecute petitioner for overstaying the time limit under his conditional landing permit.

3. Whether the same district judge could rule upon both a motion to stay a deportation order and upon the sufficiency of a complaint for declaratory judgment asking that the deportation order be held void.

STATUTE INVOLVED

The Immigration and Nationality Act, 66 Stat. 163, provides in pertinent part as follows:

Section 101, 66 Stat. 166, 8 U.S.C. 1101:

> (a) As used in this Act—
>
> * * * *
>
> (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—
>
> (D) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an oper-

ating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

* * * *

Section 241, 66 Stat. 204, 8 U.S.C. 1251:

(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

* * * *

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;

* * * *

Section 242, 66 Stat. 210, 8 U.S.C. 1252:

* * * *

(c) When a final order of deportation under administrative processes is made against any alien, the Attorney General shall have a period of six months from the date of such order, or, if judicial review is had, then from the date of the final order of the court, within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other condition as the

Attorney General may prescribe. * * * If deportation has not been practicable, advisable, or possible, or departure of the alien from the United States under the order of deportation has not been effected, within such six-month period, the alien shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section. * * *

Section 252, 66 Stat. 220, 8 U.S.C. 1282:

(a) * * * If an immigration officer finds upon examination than an alien crewman is a nonimmigrant under paragraph (15)(D) of section 101(a) and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b), and for a period of time, in any event not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

* * * *

(c) Any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit issued

under subsection (a) shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or shall be imprisoned for not more than six months, or both.

STATEMENT

Petitioner, a native and citizen of Greece, arrived in this country on September 21, 1956, as a crewman on a vessel from Germany (R. 10-11). One day after this vessel started its return trip petitioner became ill, was picked up by the Coast Guard, and transported to a government hospital at Brighton, Massachusetts, where he remained until October 5, 1956. Petitioner was admitted as a non-immigrant crewman under Sections 101(a)(15)(D) and 252 of the Immigration and Nationality Act (*supra*, pp. 2, 4), and was given a permit granting the privilege of voluntarily leaving the country on any vessel within a maximum time of 29 days, making the latest permissible date of his stay, October 20, 1956 (R. 11). When petitioner was discharged from the hospital on October 5, 1956, he was immediately advised by immigration authorities that arrangements had been made (subject to a bond by his previous employer) for his passage on a vessel departing the next day from New York. Instead of departing on October 6 or requesting permission to remain until October 20, petitioner absconded to the home of his cousin in Ohio. He was not apprehended until May 10, 1957 (R. 11).

On May 13, 1957, an order to show cause why petitioner should not be deported and a warrant for his

arrest were issued and served. On May 21, 1957, after a hearing before a special inquiry officer, petitioner was found deportable under Section 241(a)(2) of the Act (*supra*, p. 3), in that, after admission as a non-immigrant under Section 101(a)(15) (*supra*, pp. 2-3), he had remained in the United States for a longer time than permitted (R. 11, 6). After the hearing, petitioner was granted, at his request, the privilege of voluntary departure in lieu of deportation (R. 11). On October 15, 1957, he was convicted in the District Court for the Northern District of Ohio for having wilfully remained in the United States in excess of the number of days allowed, in violation of Section 252(c) of the Act, (*supra*, p. 4). This conviction was affirmed *sub nom. Kotsampas* v. *United States*, 257 F. 2d 64 (C.A. 6), and certiorari was denied on January 12, 1959. 358 U.S. 925. While petitioner was serving a six-month sentence, he was granted a parole in April 1959 for the purpose of deportation only, and was again given the privilege of voluntary departure. After obtaining two stays of deportation from the immigration authorities so that he could press a claim against a Chicago employer before the Illinois Industrial Commission, he settled his claim in September 1959 (R. 12).

On September 17, 1959, petitioner surrendered himself for deportation at Cleveland, Ohio, and was transported to New York City. A habeas corpus petition filed there was later withdrawn (R. 12). Petitioner filed a complaint for a declaratory judgment seeking cancellation of the order of deportation in the District Court for the Northern District of Ohio

on October 9, 1959. On that same date the district court denied his application for stay of the deportation order (R. 1). On October 21, 1959, the Court of Appeals for the Sixth Circuit ordered that petitioner be returned to the Ohio federal court and that he be granted a stay of the order of deportation pending a hearing on his complaint for a declaratory judgment (R. 7).

The complaint for a declaratory judgment alleged that the deportation order was not supported by the record and that it was no longer effective since the Immigration Service, by proceeding with the criminal prosecution, made it impossible to execute the deportation order within six months (R. 2-6). Respondent filed a motion to dismiss the complaint, for summary judgment, and for vacation of the temporary stay of execution (R. 8). Petitioner filed a motion for oral hearing on the motion for summary judgment (R. 9), and a motion for hearing to take testimony to complete the record by adding thereto "all the matters, relating to this alien occurring after the Special Inquiry Officer's hearing held May 21, 1957" (R. 10). The district court denied the complaint for a declaratory judgment, vacated petitioner's temporary stay of execution, denied his motion for oral hearing, and granted respondent's motion for summary judgment and for dismissal (R. 2, 16). In its memorandum opinion the court observed that petitioner had raised issues concerning alleged occurrences after the finding of the special inquiry officer, but that "the relief requested in this action for declaratory judgment limits us to a review of

the finding of illegal overstay of the entrance permit and subsequent order of deportation issued by the Special Inquiry Officer" (R. 12-13). The court held that petitioner was deportable by reason of his prolonged stay after his illness had been cured and his unjustifiable flight, and that he had been ordered deported only after he had been afforded the procedural safeguards outlined in Section 242 of the Act (R. 13, 14). The court of appeals affirmed "for the reasons stated in the opinion" of the district judge (Pet. App. 15a).

ARGUMENT

1. There is no merit to petitioner's contention (Pet. 8, 9, 10-11, 12) that he was improperly denied permission to expand the administrative record in order to adduce evidence of various matters arising subsequent to the special inquiry officer's hearing on May 21, 1957. Petitioner's action sought cancellation of the deportation order as void; he was not seeking to review denial of other forms of administrative relief. The only record bearing on the basic validity of the deportation order was, as the district court held, the record before the administrative authorities. At the administrative hearing petitioner never claimed that he was in the United States legally. He was clearly deportable by reason of his failure to leave

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[1] *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260, and *Shaughnessy* v. *United States ex rel. Accardi*, 349 U.S. 280, are not in point. The question in those cases was whether occurrences prior to the hearing, which were not reflected in the record, rendered the administrative hearing unfair. No such claim is made here.

the country on October 6, 1956, after his recovery at the hospital and his unjustifiable flight (R. 13, 14). Cf. *United States ex rel. Vassiliades* v. *Commissioner of Immigration*, 103 F. 2d 423 (C.A. 2).[2]

2. Petitioner argues (Pet. 10, 12) that the deportation order of May 21, 1957, became void when it was not executed within six months after issuance in accordance with Section 242(c) (*supra*, pp. 3-4). Section 242(c) provides that the Attorney General has six months to effect an alien's deportation and during that period the alien may be detained, kept under bond, or released on some other condition prescribed by the Attorney General. But the six-month limit for effecting the deportation can clearly be extended since Section 242(c) further provides that, if deportation "has not been practicable, advisable, or possible" or the alien's departure has not been effected within the six-month period, he shall be subject to further supervision and detention pending "eventual deportation." When the Attorney General through his authorized representatives deemed it "advisable" to postpone deportation in order to bring criminal proceedings against petitioner for having wilfully remained in the United States in excess of the 29 days allowed, he was therefore acting in accordance with

[2] The evidence, which petitioner claims (Pet. 13-14) he was prevented from introducing as to matters prior to the deportation order, plainly was not relevant to the question of the legality of petitioner's presence in the United States and therefore of his deportation. This evidence is relevant only to whether petitioner should have been granted voluntary departure, which was in fact granted.

statutory authority. There is nothing in the Act to indicate that the bringing of this criminal prosecution rendered the deportation order void.[3]

3. There is no merit to petitioner's contention (Pet. 8-9, 12) that it was improper for the same district judge who had denied the application for stay of the deportation order to rule also on the sufficiency of the complaint for a declaratory judgment. It is, of course, common judicial procedure for the same judge to rule upon different motions in the same case. No affidavit was filed against the judge accusing him of personal prejudice. After the court of appeals granted the stay, the district court, as its opinion shows (R. 10-16), analyzed petitioner's contentions and properly found them to be without merit.[4]

Shrode v. *Rowoldt*, 213 F. 2d 810 (C.A. 8), relied upon by petitioner (Pet. 10, 12), is not in point. It did not hold, as petitioner argues, that failure to effect the alien's deportation within six months after the order of deportation rendered it void. It merely held that after the six-month period the Attorney General could not require continuation of the alien's bond but could retain power of supervision over the alien.

[4] There is nothing in the court of appeals' order of October 21, 1959 (R. 7), either express or implied, to support petitioner's suggestion (see Pet. 3) that under this order the complaint for a declaratory judgment was necessarily immune from summary judgment in favor of respondent.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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